

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **VICE CHAIRMAN DOUG MOOD**, on February 1, 2001
at 3:15 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: Rep. Aubyn A. Curtiss, Chairman (R)

Members Absent: None.

Staff Present: Staci Leitgeb, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 407, 1/28/01; HJ 10,
1/28/01; HJ 11, 1/28/01
Executive Action: HJ 11

HEARING ON HB 407

Sponsor: REPRESENTATIVE KEN PETERSON, HD 20, BILLINGS

Proponents: James Lechner, Mt coalition
Dennis Morgan, Contractor
Mike Tehle, Alpine Plumbing & Heating
Matthew Leow, Mt PIRG
Pat Harmon, Midwest Heating & Cooling
Cindy Donaldson, Contractor HVAC, Butte Tin Shop
Carl Schweitzer, Plumbers Assoc of MT.
Bill Bentley, NECA
Riley Johnson, NFIB

Opponents: John Alke, MDU
Stan Dupree, IBEW
Dave Gates, MPC
Dennis Lopach, Northwestern Corporation
Con Malee, Energy West

Informational Witnesses: Martin Jacobson, PSC

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1.1}

REPRESENTATIVE KEN PETERSON, HD 20, BILLINGS, stated that this is a bill that is designed to prevent regulated utilities from competing in the private sector. He believes that the utilities that are regulated are given special advantage by the state of Montana to conduct their business. They should not be using that special status to compete with private industry in the area of providing appliances, appliance merchandise, and servicing of appliances. This bill is patterned after a Kentucky law that is in effect. What the bill does is all new law.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 4.4}

James Lechner, MT coalition, submitted written testimony and supplemental information. EXHIBIT(feh26a01) EXHIBIT(feh26a02) EXHIBIT(feh26a03)

Dennis Morgan, Contractor, submitted written testimony.
EXHIBIT(feh26a04)

Mike Tehle, Alpine Plumbing & Heating, submitted and explained written information. **EXHIBIT(feh26a05) EXHIBIT(feh26a06) EXHIBIT(feh26a07) EXHIBIT(feh26a08) EXHIBIT(feh26a09) EXHIBIT(feh26a10)**

Matthew Leow, Mt PIRG, stated that MT PIRG rises in support of this bill.

Pat Harmon, Midwest Heating & Cooling, said there is concern in the eastern part of the state is that it is so rural, they say if the utility companies can not service them, they won't get serviced.

Cindy Donaldson, Contractor HVAC, Butte Tin Shop, stated that the HVAC contractors have enjoyed a good relationship with MPC. Now that MPC has been sold and the new company has service appointments on the Internet, the HVAC contractors in the area could go out of business.

Carl Schweitzer, Plumbers Association of Montana, said their members stand in favor of this bill. All of the contractors he has spoken with in the eastern part of the state are all feeling the effects of the programs MDU has to offer. Now the shadow is going to cover the entire state of Montana with the pending sale of MPC. It is going to be a concern to everyone in the state.

Bill Bentley, NECA, went on the record that the association supports the bill.

Riley Johnson, NFIB, said the air conditioning people and the plumbers are affected by this, but there is also the lighting aspect of this, especially on commercial type projects.

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 4.7}

John Alke, MDU, said MDU has been in the business of selling and servicing appliances for 75 years. It currently has 7500 service contracts in eastern Montana. Their customers love the program because it is convenient. This bill has been mis-represented to you. The allegation that the services they provide are being subsidized by their utility rates is simply not true. These people have filed complaints with the PSC, those complaints have been repeatedly denied. Section three of the bill is an outright prohibition. Subsection 1 says that a public utility providing natural gas or electric service may not merchandise or service household natural gas or electric appliances. This is

prohibition. It can only be in an emergency situation, unless they establish a separate subsidiary. Contrary to what they may want you to believe, MDU is a Montana business. They have over 200 employees that live and work in Montana. They pay property taxes in Montana. Their utility companies pay corporate license taxes in Montana. MDU is Montana too.

Stan Dupree, IBEW, addressed employee concerns. These members have been performing these types of duties for approaching 90 years on gas and electric. It doesn't appear to him there would be any added benefit to the consumers to pass this legislation. It would definitely add to the consumer cost. It will add further chaos to an industry that is already plagued to the point of near total chaos. It would restrict his organizations members from performing the duties that they have spent much time and money training to perform safely and efficiently and economically. If you truly believe in competition, then why would you wish to eliminate a competitor in this industry.

Dave Gates, MPC, said this bill harms customers and places undue and unnecessary burden on the public utilities by requiring the formation of functionally separate business entities to provide services requested by the customers. This bill would impede their continued ability to provide utility services that they have traditionally supplied to their customers. This bill discriminates against utilities and their customers. There is no justification for such differing treatment which only serves to penalize MPC customers.

Dennis Lopach, Northwestern Corporation, would like to support the previous comments regarding the existing accounting safeguards, which allocate the costs within the separate businesses. He believes these safeguards are sufficient.

Con Malee, Energy West, shared that currently Energy West provides the types of services this bill would prohibit. They support all of the previous statements made today. In West Yellowstone, they hired the only furnace dealer in the area as their employee. They are the only ones in that community to provide the types of services that would be prohibited by this bill. The PSC already mandates accounting between these types of services. They provide a list of qualified dealers and technicians in an effort to encourage their utility customers to use them.

Informational Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 22}

Martin Jacobson, PSC, submitted written testimony.
EXHIBIT (feh26a11)

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 25.4}

REPRESENTATIVE FORRESTER asked Mr. Harmond that, in the course of his business, he may not be responsive to someone calling for a service call at 3:00 a.m. Have you turned some of those calls away or do you answer them? **Mr. Harmond** said that absolutely they do answer them. They would not be in business if they did not have someone on call 24 hours. If you are not there when the customer needs you, they won't give you a second chance. They will call someone else.

REPRESENTATIVE SCHMIDT asked if other states have laws on this. **REPRESENTATIVE PETERSON** said that this law was patterned after the one in Kentucky. They have this law on their books currently and it has been there for a while.

REPRESENTATIVE MATTHEWS assumes that there are no laws like this in North Dakota or South Dakota. **Mr. Alke** stated that there are no laws like this in either North or South Dakota. **REPRESENTATIVE MATTHEWS** asked if he knew what percentage of MDU's business deals with the appliances and what percentage deals with utility. **Mr. Alke** would guess that the majority would be on the service side. They do not sell all appliances in all locations. The service plans are offered throughout their service territory.

REPRESENTATIVE MATTHEWS said Mr. Schweitzer mentioned Glasgow and Sidney contractors are concerned with this. **Mr. Schweitzer** said that he spoke with a HBAC contractor in Sidney that was very upset with the unfair competition. He also talked to a plumber in Glasgow that was very upset. **REPRESENTATIVE MATTHEWS** asked how many local appliance dealers these small towns have. **Mr. Schweitzer** answered that there are three HBAC contractors in Sidney, one in Miles City. There are small Mom and Pop businesses in each one of these communities that are having to compete.

REPRESENTATIVE STORY asked if the services supplied in the service area are for gas only or for gas and electric? **Mr. Alke** responded that it is gas and electric. **REPRESENTATIVE STORY** asked if, on this plan, people pay a certain rate a month and then if they need service, that service is provided free of charge. **Mr. Alke** said that is correct. They must sign up for

the contract for a year. It is like an insurance policy.

REPRESENTATIVE STORY asked, if this is just like an insurance policy, is this regulated by the commissioner of insurance.

Mr. Alke said no, he said it is like an insurance policy.

REPRESENTATIVE STORY commented that private ambulance companies doing the same thing had to be regulated. **Mr. Alke** said that he is not familiar with that problem.

REPRESENTATIVE DELL asked for Mr. Jacobson to enlighten the committee on how comprehensive are these audits, and your opinion on any efforts made by the PSC that this is not being crossed.

Mr. Jacobson stated that the audits are financial audits, they are not on-site audits. They do not plan to have anyone in utility vehicles monitoring the records. If the records are correctly kept, then the audits will be correct. **REPRESENTATIVE DELL** said that financial audits are not indicating that there is any crossing taking place. Are the financial audits precise instruments enough to be able to reassure that the crossing is not taking place? **Mr. Jacobson** answered they are probably not.

REPRESENTATIVE SCHMIDT asked if MDU does the same kind of advertising in North Dakota and the other states it services.

Mr. Alke stated that the corp of the service territory is North Dakota, South Dakota, Montana and Wyoming. He said that most of these programs are done on a multi-state basis, so he would be very surprised if the some advertising was not conducted in all four states. **REPRESENTATIVE SCHMIDT** asked if they do inserts in power bills regarding the service business. **Mr. Alke** said that approximately 18 months ago they discontinued using their public utility bills for purposes of inserting flyers on their merchandise and operations.

REPRESENTATIVE FORRESTER asked Mr. Tehle, when someone calls him a 2:00 a.m., does he tell them to wait until 8:00 for service.

Mr. Tehle said that they have someone on call 24/7.

REPRESENTATIVE DEE BROWN asked if your area has co-ops, are they also getting into that market. **Mr. Lechner** stated that they are regulated by the federal government, and, yes, they do engage in doing business on occasion, primarily in the rural area.

REPRESENTATIVE DEE BROWN asked how does that competition hurt you in your business along with regulated utilities such as MDU.

Mr. Lechner said that rural areas are very small and there are very few people involved in that.

REPRESENTATIVE FORRESTER asked how a co-op helps a customer put in a ground-source heat pump? **Mr. Lechner** said that they give

them a loan to install this heat pump, but you can hire a private contractor to do the work.

REPRESENTATIVE STORY asked if MPC has a program similar to this MDU one doing. **Mr. Gates** responded that they do not.

REPRESENTATIVE STORY asked that, assuming that MPC sale goes through, does Northwest Corporation plan to offer a similar customer service. **Mr. Lopach** said that he will have to look into that, he is not certain.

REPRESENTATIVE MOOD said it seems to be a legitimate argument that when a consumer has difficulty with an appliance, it would often be instinct to call the utility. In a case where that happens, do you think it is now foolish to tie the hands of the utility from actually servicing if it is necessary? **Mr. Harmon** answered that, for instance, if a pilot light is out and they have to light it and clean it. He does not think it is foolish to send a contractor in to do it, but when it comes to changing a water heater or selling merchandise, he does think it is foolish. It is unfair that they have the customer base to draw from.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 19.9}

REPRESENTATIVE PETERSON said that the utilities today at this hearing sent out their big guns that are either attorneys or lobbyists or paid officials of the company. Remember that the independent businessman had to take time out of their businesses, come here from distances and they do not get paid for coming here. The utilities have a monopoly. There is evidence here that there is cross over between what should be private and what should be controlled utilities. Who pays for the services within the utilities? Is it in the rate base? This bill is similar to Kentucky law.

HEARING ON HJR 10

Sponsor: **REPRESENTATIVE VICK, HD 31, Gallatin Gateway**

Proponents: **Fay Lesmeister, Mt. Snowmobile Association**
Bill Howell, West Yellowstone Business
Bob Bushnell, LVSW
Pam Schmutzler, MSA
Don Allen, WETA
Brad Griffin, MRA

Jaci Brand, MSA
Riley Johnson, NFIB
Mark Simonich, commerce
Stewart Dogger, MIA
Carl Schweitzer, Bozeman Dept. Commerce
Amy Sullivan, MTC
Mike Tehle, Billings
Dee Brown, HD 83
Ken Hoovestol, MSA

Opponents: NONE

Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 23}

REPRESENTATIVE STEVE VICK, HD 31, Gallatin/Gateway, stated the purpose of this bill is to encourage the continued use of snowmobiles in Yellowstone Park. He was not approached by anyone to produce this legislation. When he read in the newspaper that this ban was going to take effect, common sense told him that something needed to be done. It is going to have a negative impact on all of the Gateway communities that surround Yellowstone Park. The people in West Yellowstone and these other Gateway communities have worked long and hard to develop their communities into thriving year round tourist destinations. They all recognize Yellowstone National Park is critical to their businesses. It appeared to him that this one rule put out by the park service could take away much of what they worked so hard to develop. This resolution will send a clear message of what the people of Montana believe to be the right thing to do in Yellowstone Park. We need to send a message to the people in Washington who write the rules and laws that snowmobiling is an important part of the experience of visiting Yellowstone Park.

Proponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 25.8}

Fay Lesmeister, Montana Snowmobile Association, represents 6,000 association members who feel that park service is depriving them of their right to witness and enjoy one of our nation's best treasures. He believes that the environmental impact study that was conducted by the National Parks Service contained data that was antiquated, flawed, and, in some cases, simply wrong. While we are concerned about access rights, the greater concern for that state should be economic impact this decision will have and its affects on the towns and businesses surrounding the park.

She hopes that this resolution will express our state's concern to the President and to Congress and to urge them to require the Department of the Interior and the National Park Service to consider alternatives which lessen the economic impact on our state and which supports regulated and modified snowmobile usage for the future in the park.

Bill Howell, West Yellowstone Business, started a snowmobile tour business in West Yellowstone 26 years ago. They started with 15 machines, now they run 275. It is a multi-million dollar business for their community and it has transformed their community to what it is today from a dirt street town. They are also the ones running the first 50 clean snowmobiles in Yellowstone this winter. They are clean, quiet, there is no smoke and they are averaging 23 miles to the gallon.

Bob Buchnell, LVSW, is a veteran and is very upset that another freedom that we fought for is being taken away from us.

Pam Schmutzler, MSA, is a member of the Ponderosa Snow Warriors. The inscription on the Roosevelt arch at the north entrance reads, "For the enjoyment of the people"; not for the enjoyment for rich people, not for the enjoyment of the cross country skiers, or for the animals, but for the enjoyment of the people, all people. This arch and the words inscribed on it have become one of the great symbols of the national park idea. Yellowstone Park was created by an act of Congress on March 1, 1872, and was dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people and for the preservation from injury or spoilation from timber, mineral deposits, natural curiosities or wonders, and their retention in their natural condition. Snowmobiling in no way goes against this originally intended preservation of Yellowstone Park. However, banning snowmobiling does go against the original intention of the public park for the benefit and enjoyment of the people.

Don Allen, WETA, stated that not only are we supporting the snowmobiling association, but the families that work in Montana also play in Montana. This is an opportunity for them to enjoy the park. The National Park Service simply ignored everyone, from our governor on down, in terms of the comments sent in on this particular plan.

Brad Griffin, MRA, supports the resolution.

Jaci Brand, MSA, has been waiting almost all her life to ride her snowmobile in Yellowstone Park. She is 14 and has been snowmobiling for almost 10 years. She is a junior snowmobile

safety instructor. She can not ride her snowmobile in Yellowstone Park until she has her driver's license. Now she may never get the opportunity to ride her own sled in the park and enjoy the winter wonders that Yellowstone offers.

Riley Johnson, NFIB, feels this is an economic development issue and a small business issue in Montana.

Mark Simonich, Martz Administration, submitted written testimony on behalf of Governor Judy Martz. **EXHIBIT(feh26a12)**

Stewart Dogger, Montana Innkeepers Association, said that Innkeepers has long supported continued and responsible snowmobile access in Yellowstone Park. The snowmobile industry creates an estimated 600 jobs, tourism creates over 30,000 jobs statewide.

Carl Schweitzer, Bozeman Department Commerce, supports this resolution especially that there are new, cleaner machines coming into the area. They believe the industry should be maintained.

Amy Sullivan, MTC, would like to urge the support of HJR 10. The way this has come down from the federal government is prohibited and doesn't gives time for the community to adjust to the economic impact this creates it also affects tourism greatly in West Yellowstone and Yellowstone Park.

Mike Tehle, Billings, as a snowmobiler, urges the support of this resolution.

REPRESENTATIVE DEE BROWN, HD 83, stands in support of HJR 10. In the Flathead, they are experiencing many of the frustrations that the Yellowstone community is facing. However, they are standing here today and we sat in our chairs 15 years ago when Glacier National Park was closed. Right now Flathead is facing the fact that the top of the mountain ranges in the Whitefish Range are going to be closed to snowmobiling. As a snowmobiler and also a business owner in the area, she recognizes the need for both summer and winter activities. Snowmobiling is one of those activities that has blended well into the West Yellowstone community. There is a statewide concern about the federal government once more creating bans on our own lands, which affects real people and businesses in the state of Montana.

Ken Hoovstol, MSA, pointed out that the main issue of this session is economic development. It does not make much sense to him to try to attract business in and at the same time lay off 400 to 600 people somewhere else.

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 16.2}

REPRESENTATIVE MCKENNEY asked how long the snowmobile season in West Yellowstone is. **Mr. Howell** said it starts approximately the 15th of December and runs through the 8th of March.

REPRESENTATIVE MCKENNEY asked when the summer season is.

Mr. Howell said the summer tourist season starts approximately May 1st and runs through October 31st unless the snow closes it sooner. **REPRESENTATIVE MCKENNEY** stated that West Yellowstone is one of his favorite places. Parts of the area, especially after March, are a ghost town. Most businesses are closed. Do you anticipate, if your snowmobile season be banned, to be like that off season? **Mr. Howell** said it would be catastrophic to their community and financially devastating to businesses in their community. It may not be as bad as April, but it certainly will be devastating. A lot of folks will be in bankruptcy.

REPRESENTATIVE DEE BROWN asked for an overview of the Montana Snowmobile Association as far as its membership and mission statement. **Mr. Hoovestol** said that the mission statement is for the development of snowmobiling and the protection of the environment. Membership wise, the last information was 663 members (families) representing over 9,000 riders. In a study, it is averaged that there are over 95,000 Montanans that snowmobile each year.

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 20.2}

REPRESENTATIVE VICK brought attention to the cover of the Montana Winter Guide, which has a pair of snowmobilers on the front. He thinks that there is an opportunity with this resolution that Montanans support winter use through snowmobiles in Yellowstone Park. He urges a strong vote in this committee.

HEARING ON HJR 11

Sponsor: **REPRESENTATIVE JOE TROPILA, HD 47, Cascade County**

Proponents: **Tobi Whitaker, Little Shell Tribe**
Roger Deslois, Little Shell Council member
Henry Anderson, Little Shell Tribe
REPRESENTATIVE CAROL JUNEAU, HD 85

Loui Clayborn, Coordinator of Indian Affairs
Shawn White Wolf, Northern Cheyenne
David Pareuteu, Little Shell People

Opponents: NONE

Opening Statement by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 22.2}

REPRESENTATIVE JOE TROPILA, HD 47, Cascade County, shared that HJR 11 has been a long time coming. The resolution says everything that needs to be said. Governor Martz said that she whole heartedly supports this resolution. This issue needs to be resolved.

Proponents' Testimony:

{Tape : 2; Side : B; Approx. Time Counter : 23.6}

Tobi Whitaker, Little Shell Tribe, is the secretary and a council member for the tribe. The members of the Little Shell Council come here today to ask for support in their federal recognition in the state of Montana, but also their re-recognition in the United States. They ask this committee to support their tribe in their federal recognition to state support. They are also supported by the Montana-Wyoming tribal leaders.

Roger Deslois, Little Shell Tribe, is a council member and is here to ask for support in this resolution. In the past all governors have recognized them as a tribe. Religious leaders have recognized them as a tribe. Even today, out-of-state people call for information on their members.

Henry Anderson, Little Shell Tribe, is the chair of cultural committee for tribe, he is also the language teacher of the native tongue in the big high schools. He wants to get this thing moving.

REPRESENTATIVE CAROL JUNEAU, HD 85, stands in support of this resolution. She appreciated the people of the Little Shell Tribe coming and sitting so long. She appreciates REPRESENTATIVE TROPILA for carrying this resolution for the Little Shell people. She thinks it is time to urge the recognition and send it on its way to Governor Martz.

Loui Clayborn, Coordinator of Indian Affairs, Governor's office, stands in support of this resolution. He also stated that Governor Martz is in support of this.

Shawn White Wolf, Northern Cheyenne, asks that the committee supports this and sends it through. One of the reasons he is here is that he was in a similar situation. When he was born, both of his parents were Northern Cheyenne, and on the birth certificate it was stated that both him and his parents were white. What that has done is it has taken twenty years to get enrolled so he could be Cheyenne instead of Caucasian. He was thinking what it would mean to him to be enrolled as Cheyenne. He has lived his life, and never relied on any agency, so the bottom line for him, why he has continued to ask for them to enroll him, is because he has wanted a place to call his. That is very important. Throughout his life, he has learned enough of the Cheyenne culture. What this means to him is what it would mean to the Little Shell Tribe, a place to belong.

David Pareutew, Little Shell Tribe, asks for committee support of this bill. Something he would like to have you think of, if we get this recognition, what the income of the impact of the economy to this state would be.

Questions from Committee Members and Responses:

{Tape : 3; Side : A; Approx. Time Counter : 3.9}

REPRESENTATIVE BROWN asked for a little history on the Little Shell Tribe. **Tobi Whitaker** responded that the Little Shell Tribe occupied the territory along the Rocky Mountains from the Canadian boarder of the Red River to North Dakota and Minnesota. Their land was taken from them by treaties in 1863 and 1892 and none of it was reserved for their exclusive use, as occupied by other Indian tribes in North Dakota. That is why the people are referred to as the Little Shell Landless of Montana. Since the tribe has no land, their federal recognition was terminated on the conclusion of the last treaty with the United States. In 1978, federal government established regulations which permit non-federally recognized Indian tribes to petition for federal acknowledgment. They were asked to leave the reservation for 107 years because they would not sign a treaty to give land to whites for settlement. **REPRESENTATIVE BROWN** asked if the Flathead are part of your tribe? **Tobi Whitaker** said that she did believe they were.

Closing by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 7}

REPRESENTATIVE TROPILA said that one of the reasons he is supporting this resolution is that their tribal offices are in his district, but it goes back a little deeper than that. In 1958, he and his wife had two little kids, bought a little piece of ground just north of Great Falls and built a house there. This house was out of the city limits. There was a hill half a mile away from this house. It was called Hill 57, and on this hill were shacks. There were families with no in-door plumbing, barrels for wood burners. His kids and their kids played together. They became best friends. One by one the shacks started to burn, whether it was intentional or accidental, who knows. All of the sudden, these people were gone off that hill. They have been roaming around our state for 107 years looking for a place to set up. A lot of them are friends of his. If this resolution was passed by the state of Montana, it might help Congress get their process moving. It is a good economic development bill for these people and for the community of Great Falls.

EXECUTIVE ACTION ON HJR 11

Motion/Vote: REP. DELL moved that HJR 11 DO PASS. Motion carried 12-0.

ADJOURNMENT

Adjournment: 5:36 P.M.

REP. DOUG MOOD, Chairman

ROBYN LUND, Secretary

DM/RL

EXHIBIT (feh26aad)